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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 ROBERT LINZY BELLON,

Case No. 3:18-cv-00294-MMD-WGC

7 Plaintiffs,

ORDER

8 v.

9 DWAYNE DEAL, *et al.*,

10 Defendants.

11
12 Plaintiff Robert Linzy Bellon, an incarcerated person in the custody of the Nevada
13 Department of Corrections, submitted a first amended civil rights complaint ("FAC") under
14 42 U.S.C. § 1983. (ECF No. 5.) On March 4, 2019, this Court dismissed the FAC without
15 leave to amend. (ECF No. 8 at 9.) The Court found that Plaintiff failed to raise any colorable
16 due process, equal protection, and Eighth Amendment claims based on the miscalculation
17 of his parole eligibility date. (*Id.* at 4–7.) The Court also found that Plaintiff's argument to
18 have the Court recalculate his parole eligibility date by recalculating/applying Plaintiff's
19 time-served in the county jail fell within the scope of habeas corpus because such a
20 recalculation would change Plaintiff's sentence start date and duration of Plaintiff's
21 sentence. (*Id.* at 7–8.) The Court directed Plaintiff to review NRS § 34.724 which directed
22 a prisoner to file a state petition for writ of habeas corpus to challenge improper
23 computations of time served pursuant to a judgment of conviction. (*Id.* at 8.) The Court
24 dismissed the FAC without leave to amend and found that an appeal under 28 U.S.C. §
25 1915(a)(3) would not be taken in good faith. (*Id.* at 9.) On January 7, 2020, Plaintiff filed a
26 motion for relief under Federal Rule of Civil Procedure ("FRCP") 60(b)(1), (2), and (3).
27 (ECF No. 10.)

28 A party can seek reconsideration under FRCP 60(b). Fed. R. Civ. P. 60(b). Under

1 FRCP 60(b), the Court may relieve a party from a final judgment or order for: (1) mistake,
2 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; or (3)
3 misrepresentation. *Id.* “Reconsideration is appropriate if the district court (1) is presented
4 with newly discovered evidence, (2) committed clear error or the initial decision was
5 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No.*
6 *1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for
7 reconsideration “may not be used to raise arguments or present evidence for the first time
8 when they could reasonably have been raised earlier in the litigation.” *Carroll v. Nakatani*,
9 342 F.3d 934, 945 (9th Cir. 2003).

10 In the motion for reconsideration, Plaintiff argues that this Court made a mistake,
11 misrepresented his arguments, and he has newly discovered evidence. (ECF No. 10 at
12 3.) Mainly, Plaintiff argues that his new evidence involves Judge Robert C. Jones’s order
13 which is allegedly contrary to this Court’s order. (*Id.*) Plaintiff asserts that he filed a federal
14 habeas corpus claim with Judge Jones, but Judge Jones held that his claim was not
15 cognizable in a federal habeas corpus action. (*Id.*) Plaintiff asserts that the Court
16 misinterpreted his arguments because he was seeking a parole hearing, not parole, and
17 continues to challenge the miscalculation of credits under the Nevada Revised Statutes.
18 (*Id.* at 3–5.)

19 On February 28, 2019, Plaintiff initiated a petition for writ of habeas corpus under
20 28 U.S.C. § 2241. (See *Bellon v. Williams*, 3:19-cv-00118-RCJ-WGC, ECF No. 1.) On
21 December 20, 2019, Judge Jones dismissed the petition. (ECF No. 20 at 1.) Judge Jones
22 found that the claim that the respondents’ failure to give Plaintiff credit toward the 20-year
23 parole eligibility period for time-served on another conviction was not cognizable in federal
24 habeas corpus because the claim would only result in an earlier parole board
25 consideration and not provide Plaintiff with an immediate or speedier release from custody.
26 (*Id.* at 2-3.) Alternatively, Judge Jones found that Plaintiff’s petition did not make a
27 colorable claim for a federal constitutional violation because Plaintiff did not have a liberty
28 interest under NRS § 213.12135 in being considered for parole on a schedule that Plaintiff

1 suggested. (*Id.* at 3.) Judge Jones's order also referenced the Nevada Supreme Court's
2 ruling denying Plaintiff's state habeas petition on the same claim. (*Id.*).

3 This Court now denies Plaintiff's motion for reconsideration under FRCP 60(b).
4 First, Plaintiff makes the same arguments in his motion for reconsideration as he did in his
5 FAC. Second, the Court did not commit clear error in its original screening order and Judge
6 Jones's order supports that. The original screening order addressed Plaintiff's 42 U.S.C.
7 § 1983 claims—due process, equal protection, and Eighth Amendment—and found that
8 he failed to state colorable claims. (See ECF No. 8 at 5–7.) The original screening order
9 also directed Plaintiff to consider filing a state petition for writ of habeas corpus to
10 challenge the improper computations of time served. (*Id.* at 8.) Judge Jones's order
11 demonstrates that the Nevada Supreme Court rejected Plaintiff's interpretation of NRS §
12 213.12135 in his state habeas petition. (See 3:19-cv-00118-RCJ-WGC, ECF No. 20 at 3.)
13 As such, Plaintiff fails to present any arguments that entitle Plaintiff to relief under FRCP
14 60(b). The Court denies the motion for reconsideration.

15 For the foregoing reasons, it is ordered that the motion for reconsideration (ECF
16 No. 10) is denied.

17 DATED THIS 6th day of April 2020.

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20 MIRANDA M. DU
21 CHIEF UNITED STATES DISTRICT JUDGE
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